and the note negotiable. In Minnesota, the higher rate is void because of a statute;[24] however, the courts have not allowed that to interfere with the negotiability of the instrument.[25] In *Miller* v. *Kyle*,[26] the Ohio court held that although the stipulation for the payment of attorney fees was void, the instrument was none the less negotiable. The third possibility would be to say that the stipulation is valid and the note is negotiable. As has been said, the great weight of authority considers this type of interest provision as valid.[27] It is also true that the great weight of authority holds that this type of interest provision does not destroy the negotiability of the instrument.[28] In *National Life Insurance Co.* v. *Silver*,[29] the Oklahoma court held that such a provision was a valid contract as long as it did not contravene the usuary law, and in *Moore* v. *Interstate Mortgage Trust Co.*,[30] the same court held that the provision did not destroy negotiability. F. A. R.

Usury — Applicability of Ohio G.C. Sec. 6346-5a to Credit Unions

The plaintiff, a credit union organized under Ohio G.C. sec. 9676 *et seq.*, sued on a note for the sum of $823.04, with interest at the rate of one per cent per month on the unpaid balance. The defendant pleaded in avoidance that the plaintiff was subject to Ohio G.C. sec. 6346-5a, which provides that a licensee under the Small Loan Company Act[1] shall not charge any interest on loans in excess of $300.00 at a rate greater than eight per cent per annum, under penalty of forfeiture of the right to collect either principal or interest. It was held that the note was void as violating this statute.[2]

The decision was unsatisfactory for a number of reasons. In the first place, there was no mention of the Credit Union Act,[3] by virtue of which the plaintiff is engaged in the loan business. Section 9683 pro-

[24] *Supra* note 20.
[25] *Investor's Syndicate* v. *Baskerville Bro's Holding Co.*, *supra* note 20.
[26] 85 Ohio St. 186 (1911).
[27] *Supra* note 15.
[28] "The same rule is applied where a note bearing interest is to bear a higher rate from maturity if not paid; such a promise in a note does not, according to the weight of authority render it non-negotiable." 2 A.L.R. 140. See annotations in 2 A.L.R. 140 and 41 A.L.R. 294. In addition, see *Burns Mortgage Co., Inc.* v. *Friedman*, 292 U.S. 487, 78 L. Ed. 1380, 54 Sup. Ct. 813 (1934).
[29] 65 Okla. 85, 163 Pac. 274 (1916).
[30] 172 Okla. 471, 45 P. (2d) 485 (1935).

[1] Ohio G.C., sec. 6346-1 *et seq.*
[2] *Columbus Postal Employees Credit Union, Inc.* v. *Mitchell*, 62 Ohio App. 343, 23 N.E. (2d) 989 (1939).
[3] Ohio G.C., sec. 9676 *et seq.*

vides: ". . . The interest on any loan made by a credit union shall not exceed one per cent (1%) per month on unpaid balances . . ." It was under this authority that the loan in question was made. This fact was not properly pleaded, and the failure of the court to consider the possibility that the plaintiff was a credit union is therefore excusable. But the court's failure to do so and to exclude credit unions from the operation of sec. 6346-5a leaves the definite impression that, whether a credit union or not, the plaintiff was subject to its penalty. Furthermore, there was no specific showing of the fact that the plaintiff was a chattel loan company and subject to the provisions of the Small Loan Company Act, if it were not acredit union.

Fortunately, a better disposition of these questions was made on rehearing, in which the court reversed itself,[4] holding that since the plaintiff failed to allege and prove its existence as a credit union, it was not entitled to charge the interest rate permitted by the Credit Union Act, and that since the defendant failed to prove that the plaintiff was a chattel loan company, sec. 6346-5a was not applicable. The Court then held that the interest charged was usurious and void, and permitted recovery of the principal and six per cent interest.[5]

This holding substantially negatives the inference resulting from the previous decision that credit unions are subject to the provisions of sec. 6346-5a, by the implication that had the plaintiff shown its organization under the Credit Union Act it would be entitled to charge the one per cent per month permitted by that act. It is submitted that this is a reasonable interpretation of the effect of the Credit Union Act. The two acts constitute separate chapters of the Code, the Small Loan Company Act considerably antedating the Credit Union Act.[6] Since the latter contains no reference to the Small Loan Company Act, it seems probable that the Legislature intended credit unions to be immune from its operation.

J. R. E.

[4] *Columbus Postal Employees Credit Union, Inc.* v. *Mitchell*, — Ohio App. — (1940).

[5] It is well settled in Ohio that the creditor on a note containing a provision for an usurious rate of interest is remitted to the "legal rate" of six per cent on the amount of his loan. *McClelland* v. *Sorter*, 39 Ohio St. 12 (1883); *Insurance Company* v. *Carpenter*, 40 Ohio St. 260 (1883).

[6] The Credit Union Act, sec. 9676 *et seq.*, is effective from August 11, 1931, while the Small Loan Company Act became effective June 7, 1911.